

**CITY OF GAUTIER
OFFICE OF THE CITY MANAGER**

DATE: June 12, 2015

TO: Honorable Mayor Gordon Gollott and Council Members

FROM: Samantha D. Abell, City Manager

SUBJECT: Consideration of a Professional Services Contract with Water Company of America

BACKGROUND:

Water Company of America (WCA) examines a utility's rate structure, customer account data base, distribution system, operations and practices for the metering of consumption, billings, collections and revenue reporting functions. The objective is to identify causes of, and remedies for, inaccuracies and deficiencies in customer billing, rate application, water meter reading, metering devices and collection functions.

DISCUSSION:

The City of Gautier has made significant advances in modernizing its water system for improved efficiencies since December 1, 2012. These improvements include:

- Contracting with Arista for improved bill-pay and mail-out service (previously performed in-house);
- Contracting with Clearwater Solutions for the operations and maintenance of the water system, which includes improvements and expansions to filtration, wells and distribution lines;
- Contracting with American Tank Maintenance for an improved schedule of maintenance and repairs;
- A city-wide water meter change out. Much of the city's water meters were antiquated and didn't comply with upcoming federal requirements. The meter purchase plan included a competitive interest rate for no additional cost to customers.

The water meter project, completed in October 2014, was performed by McNeil Rhoads and monitored by Clearwater Solutions, who is responsible for reading, maintaining, and future replacement.

On the horizon is the integration of a new billing software system for customer convenience and improved technology. The ultimate goal is to improve water system efficiencies in order to reduce the cost of operations that determine rate schedules.

Gautier must ensure that there is no unbilled and misbilled service prior to the integration of the existing software system with the new software system in the coming months. Good data in, good data out. An independent, third party company which specializes in locating, assessing, and correcting billing discrepancies will offer physical investigation, analysis and review.

SUMMARY:

WCA provides a turnkey service that includes technical expertise, rate schedule analysis, and trained multidiscipline field crews to determine deficiencies and remedies for the metering of consumption, billings, collections, and revenue reporting functions.

There is no upfront cost for service. WCA targets the apparent loss in the water system. Changes made as a result of WCA which result in increased revenue will be split 55/45 for an initial 36 month period. Afterwards, the city retains 100% of increased revenue.

RECOMMENDATION:

The City Manager recommends approval of the WVA contract. The City Council may:

1. Approve the WCA contract; or
2. Direct the City Manager to negotiate further the revised terms; or
3. Reject the Contract.

ATTACHMENTS:

WCA Coverletter dated May 19, 2015
WCA Contract

Mayor Gollott and Members of the City Council
Gautier, Ms.

May 19, 2015

Please find this letter as an introduction of Water Company of America (WCA) to your entity. Each year millions of dollars are lost by utility companies because of unbilled or miss billed water and sewer. As a solution to this, Water Company of American was formed in 1989 to provide professional services for governmental entities in the area of identifying these "revenue leaks." To date, Water Company of America has returned more than \$140 million in additional revenue to governmental entities throughout the United States.

Water Company of America's success centers on conducting a complete and meticulous review of an entity's utility billing system in an effort to identify those accounts not consistent with both industry norms and the entity's local ordinances. Water Company of America is able to accomplish this by the following:

1. WCA has invested major resources in developing its own state-of-the-art software for analyzing the client's billing data.
2. WCA Staff consists of highly trained motivated individuals with extensive training and expertise in identifying revenue recovery opportunities.
3. WCA has made significant investment in sophisticated flow metering technology to verify meter accuracy.

Water Company of America operates strictly under a performance based contract meaning that WCA is paid solely from a percentage of increased revenue resulting from our work. WCA will bear all cost for the project including staff, working capital, proprietary software, etc. WCA will get 55% of increased revenue for a 36 month period; leaving the client with 45% during this initial period. Once the 36 month period has expired, the client will retain 100% of the additional revenue generated by WCA in perpetuity.

Given the recent completion of a meter change-out program which allows for electronic meter reading coupled with the City implementing a new water and sewer billing software system in the very near future; the timing is perfect for Water Company of America to partner with your agency to identify a potential revenue stream in the way of unbilled or miss billed water and sewer. It is important to correct any errors contained in the former system before migrating to a new one. WCA has a proven track record and is confident that we can bring increased value to your entity. For additional information on Water Company of America visit our website at: www.watercompanyofamerica.com.

Yours for Consideration,



Mike Ncaise, CPA/MBA
Region Manager
Water Company of America

**CONTRACT
FOR
SERVICES**

THE STATE OF: MISSISSIPPI

COUNTY OF: JACKSON

CITY OF: GAUTIER

KNOW ALL MEN BY THESE PRESENTS:

THIS CONTRACT FOR SERVICES ("Contract") is made on the date of countersignature, hereinafter specified, by and between the CITY OF GAUTIER ("city"), ClearWater Solutions, LLC ("CWS"), and ISI Water Company, a Texas corporation, with its principal office in Houston, Harris County, Texas (referred to herein as Water Company of America "WCA"). The initial addresses of the parties are as follows:

WCA
ISI Water Company
5215 Fidelity St
Houston, Texas 77029

City
City of Gautier
3330 Highway 90
Gautier, Ms. 39553

CWS
ClearWater Solutions, LLC
2660 East Chase Lane, Suite 200
Montgomery, AL 36117

WITNESSETH:

WHEREAS, the City desires to secure the performance of services of the highest quality by trained, skilled personnel; and

WHEREAS, WCA desires to provide such services in exchange for the fees hereinafter specified; and

WHEREAS, CWS currently maintains a Professional Services Agreement with the City of Gautier to, among other things, manage, operate and maintain the City's water and wastewater systems, and as such, desires the services hereinafter specified; and

NOW, THEREFORE, for and in consideration of the premises and mutual covenants herein contained, it is agreed as follows:

ARTICLE I

Definitions

As used in this Contract, the following terms shall have meanings as set out below:

"Account" is defined as a particular Water, Sewer, Wastewater, and/or Solid Waste Service of the City. This definition includes all unauthorized taps discovered by WCA that previously had not been given an Account number by the City.

"Base Revenue" is defined as the average of the monthly Account billings during the period of time when the Account experienced the problem and which immediately precedes the completion of the Work, for up to a twelve month period. By way of example, and not limitation, if WCA discovers a meter which has been broken for a six-month period, resulting in consumption of zero usage during such six-month period, the Base Revenue is zero, and shall not include in the Base Revenue average the preceding six-month period during which time the meter operated properly.

"WCA Share" is defined as the fee to be paid by the City to WCA for performance of duties under this Contract, computed in accordance with Section 5.02 hereof.

"City" is defined in the preamble of this Contract and includes its successors and assigns.

"WCA" is defined in the preamble of this Contract and includes its successors and assigns.

"Customer Information System" (or "CIS") is defined as the system used by the City to bill and to account for customer activities.

"Contract Administrator" is defined as that person designated by the City by notice to WCA, to administer this Contract on behalf of the City. This individual shall have a working knowledge of City protocol and operating procedures of the City, and shall have the authority and responsibility of administering all day-to-day aspects of this contract on behalf of the City.

"CWS" is defined in the preamble of this Contract and includes its successors and assigns.

"Director" is defined as the CWS's designated Utility manager who has ultimate authority and responsibility over this Contract.

"Documenting the Find" is defined as the notation by WCA on the Research report to the City and CWS or the approval of a submitted Formal Work Order.

"Find" is defined as the discovery by WCA of an Account condition, as the result of the Work, which causes a specific Water, Sewer, Wastewater, or Solid Waste Service to be improperly or inaccurately billed.

"Force Majeure" as used herein, shall include but not be limited to, acts of God, acts of the public enemy, war, blockades, insurrection, riots, epidemics, landslides, lightning,

earthquakes, fires, storms, floods, washouts, tornadoes, hurricanes, arrests, and restraints of government and people, explosions, breakage or damage to machinery or equipment and any other abilities of either party, whether similar to those enumerated or otherwise, and not within the reasonable control of the party claiming such inability.

"Increased Revenue" is defined as the amount of monthly income received by the City on an Account, over and above the Base Revenue, including any rate increases, subsequent to corrective action being taken on that Account, including both income derived from ongoing usage, as well as retroactive billing.

"Notice to Proceed" is defined as the written notification by the City to WCA to initiate Work. This notification shall be issued upon the successful conversion of Account data from the CIS by WCA. The date of the Notice to Proceed shall mark the initiation of the Contract Term.

"Research Report" is defined as the reports delivered to the City and CWS by WCA pursuant to Section 2.01 (C) (1) hereof.

"Water, Sewer, Wastewater, and/or Solid Waste Service" is defined as the physical location of a City consumer, both known and unknown to the City and CWS, which utilizes services provided by the CWS.

"Work" is defined as all of WCA's efforts towards determining needed changes and recommending the corrective actions necessary in order for the specific Water, Sewer, Wastewater, or Solid Waste Service to be properly and accurately billed.

"Work Order" shall be defined to mean that certain standard document that defines relevant information about a City Account that WCA has evaluated and determined to be defective.

ARTICLE II

Scope of Service

2.01 - Basic Service

WCA shall provide the investigation, Work Orders, and field services necessary to maximize the billable revenue for the City's utility Service.

- A) Investigation and Field Work
- B) Upon receiving the Account information described in Section 3.01 (A) hereof WCA shall:
 - 1) Investigate each Account and determine if there is a loss of revenue to the City associated with that Account.
 - 2) Submit Work Orders with recommendation for changes in billing procedures and/or changes in physical service. This information will be provided for each Account.
- C) Reports
 - 1) WCA shall provide to the City on a periodic basis a complete list of all Accounts researched on which WCA has identified potential increased revenues to the City. This Research Report shall be submitted for the purpose of "Documenting the Find" and WCA shall be entitled to its portion of the Increased Revenues on said Accounts (the

- WCA Share), if the Work Order(s) included therein are subsequently approved by the Contract Administrator.
- 2) On each Account for which WCA has documented the Find and the City has collected Increased Revenue, WCA shall provide a detailed report that quantifies Increased Revenue prepared from the information received from the City in the monthly account data download. This report typically contains at least the following information:
 - a) Work Order number
 - b) Account Number
 - c) Cycle counter (indicates progression through the revenue sharing period)
 - d) Amount of customer billing (from the download)
 - e) Base Revenue
 - f) Calculation of Increased Revenue
 - g) Calculation of WCA Share
 - 3) WCA may provide the Contract Administrator a status report on a frequency agreed to by the parties. This report is to be inclusive of all Accounts that are deemed by WCA to justify action and on which a Work Order has been generated in the prior month.
- D) WCA warrants that all work shall be performed in a good and workmanlike manner meeting the standards of quality prevailing in the City ordinances for services of like kind. WCA further warrants that trained and skilled persons who have been previously approved by the City shall perform all Work.

2.02 - Services in General

WCA shall coordinate all of its activities herein described with the City, the Director, WCA Administrator, or their designated representative(s).

2.03 – Finds Exempted

In certain rare cases, WCA may discover a Find on an account of which the City or CWS has prior knowledge and is attempting to remedy. Such a Find being remedied by the City is exempted from WCA Work. These cases fall into two categories and require that WCA shall: 1) for a period of 60 calendar days from the date of the inception of a new Account problem that originates during the term of this agreement, refrain from submitting a Work Order related to that Find, and 2) for a period of 60 calendar days beginning at the Notice to Proceed date, refrain from submitting a Work Order for any specific account problem known to the City and made known to WCA, that the City is in the process of remedying.

It is agreed by the parties hereto that the purpose of this Section 2.03 is to define and agree to the period of time for the City and CWS to remedy new problems that it discovers, and/or to remedy known situations. This will minimize duplication of effort, thus keeping project resources focused on providing maximum benefit to the City.

ARTICLE III

City Duties, Data Records, Work Products, Etc.

3.01 - Certain Duties of the City and CWS:

- A) In addition to its other duties under this Contract, the City and CWS shall, to the extent permitted by law for each Account, promptly provide access to all the data and records in the possession of the City and CWS, and provide copies of any documents in the possession or control of the City and CWS, or available to the City and CWS, which are

requested by WCA and are reasonably necessary for WCA to perform its duties under this Contract. CSIS data shall be in two formats. First, a monthly download (transmitted via FTP or written to CD) of select fields of Account data generated by an automatic script or macro. Second, a VPN link to the CSIS for the viewing and extracting of "real time" information. At no time will WCA be able to input a change or modification to an Account by way of this link.

- B) Upon execution of this Contract by all parties, the City will coordinate a post-award meeting with WCA and all designated management personnel representing the City under this Contract in order to fully explain all the aspects of this Contract.
- C) The City and CWS shall review all Work Orders submitted by WCA under Section 2.01 (B) hereof and within ten (10) working days of the date of submittal, the City shall advise WCA of the disposition of the Work Order request (approved or denied).
- D) The CWS shall timely implement the recommended corrective action identified in the Work Order once approved and notify WCA and the City of this action once complete and the date of completion. Changes to account data such as billing code changes shall be accomplished within thirty calendar days. Should this not occur within the time frame specified, the CWS shall issue to WCA written notification of a fifteen day extension. Work Orders that involve changes to physical service shall be expedited with all reasonable haste. All parties recognize and agree that the purpose and intent of the project cannot be realized until approved changes have been implemented and accounts are fairly and accurately billed. If account changes are not completed within the time frames described, the City shall approve and pay an estimate of the WCA Share (ref 5.02 C).
- E) The Contract Administrator shall assist WCA in its dealings with any City department.
- F) The City and CWS shall acknowledge that WCA has Documented the Find pursuant to Section 2.01 (C) (1), by promptly entering the appropriate information related to the Account within the "CIS" System, or by whatever other method the City chooses. Once documented, the City shall not deny approval of a Work Order due to any action taken by the City during the approval process.
- G) Matters not specifically covered by this Contract will have procedures established by mutual agreement of WCA, the Director, and the Contract Administrator.
- H) At all times, the spirit of this Contract will be upheld by the City, CWS, and WCA. WCA is performing a service to the City by increasing revenue to the City. The City and CWS have given WCA authorization to perform the defined duties of this Contract and will not hinder, restrict, delay or compete with WCA's performance of these duties.

ARTICLE IV

Indemnification and Insurance

4.01 - Indemnification

WCA hereby agrees at all times to defend, indemnify and hold the City harmless from and against any and all liability, losses or costs arising from claims for damages, or suits for loss or damage, including without limitation out-of-pocket costs and reasonable attorneys fees, which arise as a result of WCAs negligence or failure to properly perform this Contract, whether such claims are asserted before or after the termination of this Contract.

4.02 - Insurance

Throughout the term of this Contract, WCA shall carry and maintain the following insurance coverage with a company or companies reasonably satisfactory to the City, and policies of insurance that meet the requirements of the State. The City shall be named as an additional insured on all such policies for this Contract, and the policy shall provide that the Director will be given at least ten (10) days notice in case of cancellation. Such insurance coverage shall have the minimum limits of liability in not less than the following amounts:

- A) Comprehensive General Liability Insurance including Contractual Liability:
 - Bodily Injury & Property Damage
 - \$ 1,000,000 per occurrence
 - \$ 2,000,000 aggregate
- B) Worker's Compensation with Employees Liability including Broad Form All States Endorsement: \$ 1,000,000

ARTICLE V

Payment

5.01 - Limitation of Funds

Any and all fees due to WCA under this Contract shall be payable solely from the funds collected pursuant to this Agreement. WCA acknowledges and agrees that the City's liability for any and all payments hereunder shall be limited by this provision. No other funds are available nor will they be appropriated for the purpose of this Contract.

5.02 - Payment for Services

- A) If any Work performed by WCA to an Account results in Increased Revenues to the City, WCA shall be entitled to a WCA Share for such Work equal to 55% of all Increased Revenues (as defined in Article I of this Contract) for a term of 36 months thereafter. The 36 month term may be suspended in the event that the account problem persists which eliminates Increased Revenue and restarted following remedy.
- B) Documentation substantiating and calculating Increased Revenue shall be reviewed and approved by the City within thirty calendar days of submission and thereafter processed for payment within the time frame stipulated by Statute. CWS will assist the City in reviewing these calculations for accuracy. Interest on all amounts remaining unapproved and/or unpaid beyond the time frame stipulated by Statute shall accrue at a rate of 10% per annum until paid.
- C) If all of the data necessary to compute the WCA Share is not available in time to make such payment when due, or if the condition described in 3.01 D) occurs, the City shall approve a good faith estimate of such Increased Revenue and compute the WCA Share accordingly. Adjustments to such WCA Share shall be made on succeeding monthly payments after actual Increased Revenues are determined.

ARTICLE VI

Term and Termination

6.01 - Term

The Contract term is initiated by the City upon the issuance of the Notice to Proceed. The term of this Contract will consist of an operational period of 24 months with payments to WCA for services rendered continuing as outlined in section 5.02.

6.02 - Termination

Either party may terminate phase one (the operations period) of this Contract by giving a thirty day written notice to the other party of the intent to terminate. The City agrees that for three (3) years after termination of this Agreement, however brought about, the City shall, during normal business hours, provide WCA with access to and the determination of fees and payments owed to WCA hereunder.

6.03 - Earned Fees

The duties and obligations of the City to pay WCA under the terms of Article V shall continue in full force and effect as outlined therein.

ARTICLE VII

Miscellaneous Provisions

7.01 - Independent Contractor

The relationship between WCA and the City shall be that of an independent contractor.

7.02 - Business Structure and Assignments

Other than by operation of law, WCA shall not delegate or assign any portion of this Contract without the written consent of the City, which shall not be unreasonably withheld. WCA however may assign any portion of its WCA Share under this Contract. Before an assignment of this sort can become effective, WCA shall furnish reasonable proof of the assignment by providing a notice to the Director and the City, containing the following information: a) the name, address and telephone number of WCA with clear reference to this Contract; b) the name, address and telephone number of assignee; and c) the identity of the fees to be assigned. If reasonable proof as described above is not provided to the Director, the City may continue to pay WCA.

7.03 - Subcontractors

WCA may subcontract any part of its performance under this Contract with the written approval of the Director or Contract Administrator. Any subcontractor shall be treated under the Contract as if they were employees of WCA, except in regard to fees. WCA shall be responsible for paying its subcontractors.

7.04 - Parties in Interest

This Contract shall not bestow any rights upon any third party, but rather, shall bind and benefit the City, CWA, and WCA only.

7.05 - Non-waiver

Failure of either party hereto to insist on the strict performance of any of the agreements herein or to exercise any rights or remedies accruing hereunder upon default or failure of performance shall not be considered a waiver of the right to insist on or to enforce by any appropriate remedy strict compliance with any other obligation hereunder or to exercise any right or remedy occurring as a result of any future default or failure of performance.

7.06 - Applicable Laws

This Contract is subject to all laws of the State of Mississippi, the City Charter and Ordinances of the City, the laws of the federal government of the United States of America and all rules and regulations of any regulatory body having jurisdiction.

7.07 - Notices

All notices required or permitted hereunder shall be in writing and shall be deemed delivered when actually received or, if earlier, on the third day following deposit in a United States Postal Services post office or receptacle with proper postage affixed (certified mail, return receipt requested) addressed to the other party at the address prescribed in the preamble hereof or at such other address as the receiving party may have therefore prescribed by notice to the sending party. However, notice pertaining to civil lawsuits shall be governed by the laws of the State of Mississippi.

7.08 - Equal Employment Opportunity

WCA will comply with all laws, ordinances and policies set by the City in reference to Equal Employment Opportunities.

7.09 - Force Majeure

In the event either party is rendered unable, wholly or in part, by Force Majeure to perform under this Contract, it is agreed that, upon such party's giving notice specifying such Force Majeure in writing or by telefax to the other party as soon as possible after the occurrence of the Force Majeure, the obligations of the party giving such notice, to the extent it is affected by Force Majeure and to the extent that due diligence is being used to cure the Force Majeure and resume performance at the earliest practicable time, shall be suspended during the continuance of the Force Majeure, but for no longer extended by the period of time during which either party was unable to perform its obligations hereunder as a result of the occurrence of a Force Majeure.

7.10 - Approvals; Authority

An approval by the Director or by any other instrumentality of the City, of any part of WCA's performance shall not be construed to waive compliance with this Contract or to establish a standard of performance other than required by this Contract or by law. No party is authorized to vary the terms of this Contract without mutually agreed, written amendment.

7.11 - Remedies Cumulative

The rights and remedies contained in this Contract shall not be exclusive but shall be cumulative of all other rights and remedies, now or hereafter existing, whether by statute, at law, or in equity; provided however, that none of the parties shall terminate this Contract except in accordance with the provision hereof.

7.12 - Representations

- A) WCA represents that it and its employees, agents and subcontractors are fully competent and qualified to perform all the service required to be performed under this Contract. WCA represents that it has experience in performing all of the services to be performed hereunder and these services shall be of the highest professional quality.
- B) The City represents that it is a duly authorized and empowered to enter into this Agreement and to carry out its obligations hereunder. By proper action of its members, the City has duly authorized the execution, delivery and performance by this Agreement.

C) CWA represents that it and its employees, agents and subcontractors are fully competent and qualified to perform all the assistance to be performed under this Contract.

7.13 - Captions

The captions at the beginning of the Articles of this Contract are guides and labels to assist in location and reading such Articles and, thereto, will be given no effect in construing this Agreement and shall not be restrictive of or be used to interpret the subject matter of any article, section or part of this Contract.

7.14 - Personnel of WCA

WCA shall replace any personnel assigned to provide services under this Contract which are deemed unsuitable by the Director or Contract Administrator.

7.15 - Entire Agreement

This Contract contains all the agreements of the parties relating to the subject matter hereof and is the full and final expression of the agreement between the parties.

7.16 - Amendment

This Contract may be modified or amended by written agreement signed by all parties hereto.

7.17 - Exclusive Contract

WCA shall have the sole and exclusive franchise, license and privilege to provide the services described in this Contract within the bounds of the Contract service area.

Witnesseth:

WCA

CITY

ISI WATER COMPANY

CITY OF GAUTIER, MS.

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____

CWA

CLEARWATER SOLUTIONS, LLC

By: _____

Title: _____

Date: _____

ATTEST:

By: _____